Supreme Court, U.S.
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No. 98-1334

In The

Supreme Court of the United States

October Term, 1998

FUNDAMENTALIST CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, et al.,

Petitioners,

vs.

CYRIL BRADSHAW, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Utah

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTRODUCTION 1

STATEMENT OF THE CASE 3

A. Background Facts 3

B. Factual basis upon which relief was granted ... 5

C. Facts regarding the free exercise of religion 12

ARGUMENT 14

I. THE TRIAL COURT PROPERLY ADJUDICATED THE PARTIES' COMPETING INTERESTS IN REAL PROPERTY WITHOUT DECIDING MATTERS OF RELIGIOUS DOCTRINE 14

II. THE U.E.P. FAILED TO PROVE AT TRIAL THAT RECOGNIZING PLAINTIFFS' EQUITABLE INTEREST IN THE PROPERTY WOULD BURDEN THE FREE EXERCISE OF RELIGION 18

III. THE UTAH SUPREME COURT PROPERLY RECOGNIZED THAT STATES HAVE A COMPELLING INTEREST IN ALLOWING PARTIES ACCESS TO THE JUDICIAL SYSTEM 19

IV. JUDICIAL RESOLUTION OF PROPERTY DISPUTES BETWEEN RELIGIOUS PARTIES DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE 20

CONCLUSION 21

TABLE OF AUTHORITIES

Page

CASES

Jones v. Wolf, 443 U.S. 595 (1979) 16

Presbyterian Church v. Mary E.B. Hull Memorial Presbyterian Church, 393 U.S. 440 (1969) 15, 16

Werner v. McCotter, 49 F.3d 1476 (10th Cir. 1995) 18

INTRODUCTION

This case arises from claims made by 21 individuals (referred to herein as the "Plaintiffs") seeking to establish their property rights in homes which they constructed on property titled in the name of the United Effort Plan, a Common Law Trust (the "UEP" or the "Trust").[1] The Plaintiffs were and are members of a religious movement known as the "Priesthood Work" or the "Work," which espouses and emphasizes certain historical teachings of present-day Mormonism. The Plaintiffs are all residents of a community formerly known as Short Creek, which is currently known as Colorado City, Arizona and Hildale, Utah. The community is composed almost entirely of individuals affiliated with the Work.

In the course of participating in the Work, each Plaintiff received a building lot on UEP land, and each Plaintiff built a home on his lot through his own expense and effort. In the late 70's and early 80's, a schism divided adherents to the Work arising from a dispute over the form and nature of group leadership. The larger of the two resulting groups, which became known as the "first ward," ultimately gained control of the UEP. In 1986, the first ward installed new UEP trustees and declared that

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[1] The UEP, its trustees, and the Fundamentalist Church of Jesus Christ of Latter-Day Saints ("FLDS Church") are referred to collectively herein as the "UEP." Plaintiffs note that organization of the UEP pre-dates the organization of the FLDS Church by over forty years, and the FLDS Church did not exist when this litigation originally began. Moreover, the FLDS Church does not hold title to any of the property at issue in this dispute, and has not asserted any interest in such property independent of that held by the UEP.

the Plaintiffs, most of whom were loyal to a smaller group known as the "second ward," were "tenants at will" on the property and were subject to eviction at the pleasure of the new trustees.

In 1987, Plaintiffs instituted a lawsuit in federal court seeking a determination of their rights. That lawsuit was dismissed for want of a substantial federal question and refiled in state court in 1993. After a full trial on the merits, the trial court determined that while the UEP owned title to the Plaintiffs' homes, it held the property in constructive trust for the Plaintiffs, such that if the UEP were to evict any Plaintiff, it would be required to pay that Plaintiff for the value of the improvements that the UEP would thereby obtain. The trial court did not decide which "ward" was the true continuation of the Priesthood Work, and in fact resisted several attempts by the UEP to cast the Plaintiffs as "apostates" or "religious dissidents."

In its Petition, the UEP now argues that the trial court's adjudication of the parties' claims violated the free-exercise clause of the First Amendment. The UEP makes this assertion notwithstanding the fact that the trial court expressly found that the UEP had failed to prove any burden on the free exercise of religion, and despite the fact that the UEP did not order a transcript of the trial with which to challenge that finding on appeal. Plaintiffs contend herein that review is not warranted because the trial court properly adjudicated the case based on neutral principals of law, without burdening the free exercise of religion. Plaintiffs urge this Court to reject

the UEP's request for blanket immunity from civil suits, and deny the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

A. Background facts.[2]

Between the early 1950's and the late 1970's, each of the Plaintiffs became associated with the Priesthood Work and became aware, to one degree or another, of the existence of the UEP, which was then administrated by a body of religious leaders known as the "Priesthood Council." (UEP Pet. at 3A). Each Plaintiff participated in the religious programs of the Priesthood Work, and contributed to the building up of the Short Creek community by donating labor, goods, money, and time. (UEP Pet. at 5A-6A).

Between 1959 and 1978, each Plaintiff was given a building lot for the express purpose of building a home for himself and his family. (*See, e.g.*, UEP Pet. at 29A-30A). Each Plaintiff built his home on UEP ground intending that the home would be his own. (*See, e.g.*, UEP Pet. at 30A). Each Plaintiff learned or was told that he could not mortgage or sell the home and that if he chose to abandon the home, the home would then belong to the UEP. (UEP Pet. at 5A). However, no Plaintiff was ever instructed that he was a tenant at will, or that anyone, including the UEP or the religious leaders, could remove

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[2] Unless otherwise noted, citations are to the trial court's Memorandum Decisior and Order set forth in the Petition for Writ of Certiorari ("UEP Pet.") at pages 1A through 98A.

him from his home under any circumstances. (UEP Pet. at 6A).

In the late 1970's and early 1980's, a schism developed among the Priesthood Council. After the death of President Leroy S. Johnson, the group divided into two groups known as the first ward and the second ward. The first ward abandoned the former Priesthood Council system of leadership, and replaced it with a presidency under the control of Rulon T. Jeffs. The smaller second ward continued the tradition of the Priesthood Council under the direction of J. Marion Hammon, Alma A. Timpson, and others. (UEP Pet. at 12A). Many but not all of the Plaintiffs are affiliated with the second ward group.

Rulon Jeffs and the first ward leadership ultimately gained control of the UEP by removing J. Marion Hammon as a trustee and appointing new trustees from among loyal first ward members. (UEP Pet. at 12A). In 1986, Rulon Jeffs sent a notice to the Plaintiffs and others living on UEP land stating that they were tenants at will on the property. Approximately one year later, the Plaintiffs instituted a lawsuit in the United States District Court for the District of Utah seeking a determination of their rights. (UEP Pet. at 12A).

From the outset, the purpose of Plaintiffs' claims has been to secure their interests in the homes that they have constructed on UEP property. Specifically, Plaintiffs have sought declaratory relief in the form of an order precluding the UEP from evicting them without compensating them for the value of the homes that the UEP would thereby obtain. The Plaintiffs also asserted general claims against the trustees and the Trust for breach of fiduciary

duty, accounting and distribution of the trust, which have not yet been adjudicated.

Plaintiffs' property claims were tried in December of 1994 and May of 1995. After hearing 19 days of testimony, receiving written memoranda, and hearing the closing arguments of counsel, the Court issued its written Memorandum Decision on January 23, 1996, awarding Plaintiffs relief pursuant to their claims for declaratory relief based on unjust enrichment. Specifically, the trial court found that the UEP would be unjustly enriched if allowed to drive Plaintiffs from their homes and to retain the benefit of the improvements constructed by the Plaintiffs without making any payment therefor.

After numerous post-trial motions and objections to various forms of the Order, the Court entered its Final Judgment on October 15, 1996. Therein the Court ordered that the UEP owns the relevant property, but holds it in constructive trust for the benefit of Plaintiffs throughout their lifetimes, such that if the UEP removes any Plaintiff from his home, it must compensate that Plaintiff for the value of the improvements it thereby obtains. The Final Judgment also addressed considerations including the payment of taxes, construction of improvements, and other practical matters, none of which is at issue here.

B. Factual basis upon which relief was granted.

The Statement of the Case set forth in the UEP's Petition attempts to demonstrate that the Plaintiffs knew they were subject to the UEP's control and that the Plaintiffs intended that their homes would belong to the UEP.

Quite to the contrary, the trial court found that no Plaintiff intended that his home would be anything other than his own home, and that no Plaintiff understood that he was subject to removal from his home at the whim of the UEP. The following facts drawn from the trial court's Memorandum Decision and Order provide adequate support for the Judgment awarding Plaintiffs an equitable interest in their homes:

1. The general understanding of UEP policy regarding the unfaithful was based on a widely publicized report of a vision received by Joseph Musser in which he was told by God that unfaithful residents would become discouraged and leave voluntarily. (UEP Pet. at 2A-3A).

2. The Plaintiffs and others in the community were often told that having a home on UEP land would be more secure than having a deed. (UEP Pet. at 5A).

3. The Plaintiffs were told and understood that they were not free to mortgage or sell the land they occupied. They were also told and understood that if they voluntarily decided to leave the land for any reason, their land and all improvements would then belong to the UEP. (UEP Pet. at 5A).

4. Some residents did become discouraged and leave the community voluntarily and their improvements then became property of the UEP. (UEP Pet. at 6A).

5. The leaders of the community invited some individuals to leave their homes, and some of these individuals left voluntarily while others were bought out or "prayed out." Those who did not leave of their own accord were allowed to remain (UEP Pet. at 6A).

6. Until recent times, the UEP never resorted to legal action or force to require an occupant of UEP land to leave. (UEP Pet. at 6A).

7. All of the Plaintiffs have built valuable improvements on land to which title is held by the UEP. (Memorandum Opinion, UEP Pet. at 4B).

8. Although verbal arrangements for the use of UEP land were usually made with members of the religious leadership who were also trustee's of the UEP or their agents such as J. Marion Hammon or Edson Jessop, the provisions of the UEP declaration and the amendments thereto were roundly ignored by everyone in the process. (UEP Pet. at 6A-7A).

9. The formalities of the administration of the UEP were ignored, as was the actual language of the trust. Many within the community felt that it would be a indication of lack of faith if the Declaration of Trust were to be obtained and examined. (UEP Pet. at 10A-11A).

10. The Plaintiffs generally assumed that they were members of the UEP automatically, or because they were allowed to live on UEP land or because someone told them that they were a member or for some other reason. (UEP Pet. at 11A).

11. Rulon Jeffs, President of the Trust and of the religious organization now known as the "first ward" has appointed trustees' for the UEP who are not members of the Priesthood Counsel, the traditional governing religious body of "the Work." He has declared the Plaintiffs to be apostates and disassociated them from his religious organization. The "Second Ward," to which most of the

Plaintiffs claim adherence, also contends that it is the true continuation of the Priesthood Work. The trial court repeatedly declined jurisdiction to resolve this religious dispute. (UEP Pet. at 12A).

12. With regard to the plaintiff Cyril Bradshaw, the Court made the following specific findings relevant to his claim for unjust enrichment:

> (a) When Bradshaw moved to the Community, he was told by J. Marion Hammon, that he was a member of the UEP. (UEP Pet. at 17A).
>
> (b) After moving to the area, Bradshaw taught school at extremely low wages. After eight years, J. Marion Hammon gave Bradshaw a UEP lot upon which to build his home (UEP Pet. at 17A).
>
> (c) Bradshaw recalled that in assigning him his lot, J. Marion Hammon told him that he could have the property "forever." (UEP Pet. at 17A).
>
> (d) Bradshaw assumed that his use of the lot was secured because of his membership in the UEP. (UEP Pet. at 17A).
>
> (e) Bradshaw spent considerable money and labor constructing a large home where he raised his family. (UEP Pet. 17A).
>
> (f) Bradshaw was never told that his right to use the UEP lot could be terminated by the trustees. (UEP Pet. at 18A).
>
> (g) Bradshaw paid tax assessments made by UEP agent Truman Barlow to help pay for the property taxes levied against UEP lands by the County. (UEP Pet. at 18A).

(h) Bradshaw was not told that he would be a tenant at will on the UEP lot until after he had already constructed improvements. (UEP Pet. at 23A).

(i) The Court specifically found that Bradshaw conferred a benefit upon the UEP by constructing his improvements, and that the trust clearly acknowledged the benefit as it was aware and encouraged the construction. (UEP Pet. at 29A).

(j) The Court also specifically found that it would be inequitable to allow the UEP to retain the benefit of the improvements constructed by Mr. Bradshaw without compensating him in the event that it chose to remove Mr. Bradshaw from his lot. (UEP Pet. at 30A-31A).

13. With regard to the Plaintiff Connell Bateman, the Court made the following specific findings:

Mr. Bateman has conferred a benefit upon the UEP by constructing valuable improvements on the lot as suggested by Pres. Johnson, the UEP's then presiding officer. The UEP was certainly aware of the improvements and in fact encouraged the construction of them. Having weighed the equities, the Court must determine whether, under the circumstances, it would be unfair for the UEP to keep the improvements without paying for them. The Court is of the opinion that such an outcome would be unjust.

Mr. Bateman was invited to build on UEP land by Pres. Johnson who served as his religious leader and also as the Pres. of the UEP. Pres. Johnson did not tell Mr. Bateman what the terms of the use of the property would be, nor did Mr. Bateman ask. It was only after the

> improvements were underway that the UEP informed Mr. Bateman that he was a tenant at will and could be asked to leave at any time. The UEP knew that there was a Declaration of Trust which would have served to inform Mr. Bateman of the limitations of his use on the property but never brought it to his attention or discussed its terms with him. The UEP must bear the major portion of the blame for the confusion that has ensued. It would be patently unjust to allow the UEP to benefit from that confusion by acquiring a large home almost finished to house another beneficiary. On the other hand Mr. Bateman must share responsibility for some of the confusion since he never made inquiry as to his position on the UEP land or the terms of his use of the land. He simply made assumptions. Mr. Bateman was not able to demonstrate that he has been given any more than the right to use the property during his lifetime for so long as the trust thought wise.
>
> Therefore the Court will award declaratory judgment in favor of Mr. Bateman on the ground of Unjust Enrichment providing for the same relief and subject to the same limitations as that afforded Mr. Bradshaw.

(UEP Pet. at 34A-35A).

14. With regard to the Plaintiff Claude Cooke, the Court made the following specific findings:

> There can be no dispute that Mr. Cooke has made valuable improvements to the property of the UEP with its encouragement and knowledge. The Court now finds that it would be unjust and inequitable to allow the UEP to take the improvements during Mr. Cooke's lifetime

without compensating him for the value of the improvements to the UEP.

The equities in this matter weigh in favor of the plaintiff. Prior to the construction of the improvements on UEP land, Mr. Cooke was never told that he was a tenant at will and could be removed from the land at the whim of the trust. He was never shown the declaration, nor informed of its existence and contents prior to the improvements. He was inexperienced in matters of business and did not even know how land was transferred. He thought that he had been given a UEP lot and the trust did nothing to disabuse him of that notion. The trust must bear the responsibility for the misunderstanding that has arisen about the extent of Mr. Cooke's rights to use the UEP land. Although the Court has found that Mr. Cooke did not act reasonably in building without an inquiry as to his rights, the trust did nothing to inform him of his limitations on this occupancy, even as he was invited and encouraged to build on UEP land and even as the trustees saw the improvements being constructed. The greater portion of the blame lies with the trust.

The Court will enter a declaratory judgment in favor of Mr. Cooke, providing the same relief and subject to the same limitations as that afforded Mr. Bradshaw.

(UEP Pet. at 47A-48A).

15. The trial court made similar findings or incorporated such findings in its ruling as to each of the other Plaintiffs.

16. In addition, the trial court also made the following additional findings in its Memorandum Opinion of September 23, 1996:

> It is important to note that the Court did not place the non-believers in possession of the UEP land. The trust, or its representatives decided who could live on the land and under what circumstances. Unfortunately, the Trust did not make clear to the occupants of the property that their right to stay on the property was limited by various factors, including faithfulness to the same religious beliefs as the UEP's trustees espoused. The occupants have now constructed improvements on the property at considerable expense which would be forfeited if the occupants were required to vacate the UEP's land.

(UEP Pet. at 4B).

C. Facts regarding the free exercise of religion.

In its Petition, the UEP argues by implication and assertion that the trial courts' decision unduly burdens the UEP in its free exercise of religion. Evidence relative to that issue was presented at trial, and was further addressed in the UEP's post-trial Motion to Dismiss. In ruling on that Motion, the trial court stated as follows:

> Defendants take the position that the court's decision granting equitable relief on the grounds of a claim of unjust enrichment is violative of this definition [of a "substantial burden" on the free exercise of religion]. The defendants struggle in specifying, however, and the court fails to see, just how the court has burdened the free exercise of religion within the above stated

definition of those terms. Nothing that the court has done in fashioning an equitable remedy to those who occupy its lands infringes in any way upon the religious practices, beliefs, activities or expressions of adherence of (sic) members of any religious group.

The defendants seem to argue that their right to practice a religious principle called the United Order is impaired by the fact that those who are not members of their faith are occupying land which belongs to a trust administered by leaders of their church. The defendants have presented no evidence in these proceedings to demonstrate that assertion. The evidence does indicate that the United Order is a goal of the defendants' church but that it is not being lived presently nor was it being lived when the plaintiffs were allowed by the trust to occupy UEP land and build improvements thereon. The evidence also was that the trustees have and do allow non-members to continue to reside on UEP land independent of the court's decision. No evidence was presented as to what constitutes the United Order and how the practice of that principle would be impacted adversely by the presence of nonbelievers in the community. The fact that the adherents of a religion may wish to live among others who believe similarly does not mean that they have the right to remove non-believers from their midst nor does the evidence in this case indicate that the defendants' church so teaches. In fact, the evidence is that the defendants' church has taught that those who move onto UEP land and then become estranged to The Work will become discouraged and leave by themselves, without the need of removal by the faithful. Therefore the

> court fails to see that a part of the United Order principle has been burdened by the remedy fashioned by the court.

(UEP Pet. at 4B). The trial court also expressly rejected the UEP's argument that the presence of non-members due to a court order, as opposed to permission of the trust, violates the UEP's free exercise rights. (UEP Pet. at 5B). It further pointed out that since the Judgment allows the UEP to remove the Plaintiffs by paying for the improvements thus acquired by the UEP, it merely creates some additional expense, which does not constitute a substantial burden as a matter of law. (UEP Pet. at 5B, (*citing, Messiah Baptist Church v. City of Jefferson, Colorado,* 859 F.2d at 820)).

ARGUMENT

I. THE TRIAL COURT PROPERLY ADJUDICATED THE PARTIES' COMPETING INTERESTS IN REAL PROPERTY WITHOUT DECIDING MATTERS OF RELIGIOUS DOCTRINE.

Throughout the case, the trial court made every effort not to address issues of doctrine or church polity. In its ruling, the trial court stated as follows:

> The Court has ruled on the legal claims of the parties taking into consideration the religious setting in which the dispute arose but has decided the case using neutral principles of law which have no relationship to the religious disputes in the case, which are not before the Court and which this Court could not decide under the provisions of both the United States and Utah

> Constitutions. The Court has ruled throughout these proceedings that the issues it will address have nothing to do with which ward is the "true" successor to The Work, or like questions. Those are religious issues and are beyond the jurisdiction of this Court.

(UEP Pet. at 97A).

The trial court's reference to "neutral principles of law" follows this Court's express approval of the process by which disputes involving church property are adjudicated based on neutral principles of law. The Supreme Court's most clear statement on this subject was set forth in *Presbyterian Church v. Mary E.B. Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969). That case involved a dispute between an international church organization and two of its local congregations which erupted when the local congregations sought control of the local property. At that time, Georgia law allowed a jury to award the property to the local church upon a determination that the general church had abandoned or departed from the tenets of faith and practice that it held at the time the local church first affiliated with it. *Id.* at 441. The Supreme Court held that a civil court cannot inquire into the doctrinal question of whether a body has adhered to its tenets of faith without intruding into an area forbidden by the first amendment. The Court thus concluded as follows:

> [T]he [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as

> not to require the civil courts to resolve ecclesiastical questions.

Id. at 449.

The holding in *Mary E.B. Hull* was further elucidated in *Jones v. Wolf*, 443 U.S. 595 (1979). In that case, the lower Court applied neutral principals of law to adjudicate a church property dispute, analyzing in secular terms the documents bearing on the issues of ownership. The Supreme Court approved this "neutral principals of law" approach and noted that "a civil court must take special care to scrutinize the document in purely secular terms," and not to rely on religious precepts in making its determination. *Id.* at 604. The court concluded that this method of resolving church property disputes is ultimately more compatible with first amendment jurisprudence than giving compulsory deference to the position of the religious body. *Id.* at 604-05.

The trial court's resolution of the case at bar under neutral principles of law was appropriate in this case for three reasons. First, determination of property rights did not ultimately depend on any religious doctrine or policy. Although the UEP's attorneys argued at length that UEP ground was sacred and that the mere presence of the Plaintiffs on the land was contrary to religious doctrine, the UEP was unable to produce any witness who would so testify. In fact, the UEP witnesses agreed that if a party refused a request to leave, they were not evicted, but were generally "prayed out" or allowed to remain.

Second, application of neutral principles was essential in order to avoid infringing the religious beliefs of the parties. In its Petition, the UEP implicitly adopts the

premise that the first ward represents the true continuation of the Work and thus has the religious right to expel the apostate Plaintiffs. Had the trial court deferred to the first ward in this manner, however, its decision would necessarily have trampled the religious beliefs of the Plaintiffs, many of whom believe with equal fervor that the second ward is the true continuation of the Priesthood Work. The Court was correct to avoid this whole quagmire by refusing to separate the apostles from the apostates, and by limiting its inquiry to the property rights of the parties under neutral principles of law.

Finally, application of neutral principles was appropriate because both the Declaration of Trust and the Plaintiffs' claims speak in the secular language of the civil law without reference to religious authority. Rather than answering the UEP's invitation to carry out a religious crusade, the trial court merely set out to ascertain the intentions and the conduct of the parties and then impose an appropriate remedy consistent with the equities of the circumstances. The UEP has not identified any instance in which the trial court improperly interpreted church doctrine or interfered in church polity in resolving the dispute.

In essence, the UEP has taken the bold position that it is not subject to judicial authority to impose an equitable remedy because it claims to be part of a church. The United States Constitution was not intended to place churches above the law in this manner. Like all persons – religious or otherwise – the UEP and the FLDS church are subject to the civil law, including the doctrine of unjust enrichment. The UEP cannot claim a religious right to

enjoy benefits produced by others without due compensation where equity dictates otherwise. Plaintiffs submit that the trial court's application of neutral principles of law was entirely appropriate in this case.

II. THE U.E.P. FAILED TO PROVE AT TRIAL THAT RECOGNIZING PLAINTIFFS' EQUITABLE INTEREST IN THE PROPERTY WOULD BURDEN THE FREE EXERCISE OF RELIGION.

At its heart, the UEP's Petition is founded on the assertion that the trial court's order infringed the UEP's free exercise of religion. In order to prove a violation of the free exercise clause, however, the UEP must first demonstrate that the trial court's action would substantially burden the UEP or its members in exercising their religion. *See Werner v. McCotter*, 49 F.3d 1476, 1479 n. 1 (10th Cir. 1995).

After hearing all of the evidence and the arguments of counsel, the trial court found that the UEP had failed to demonstrate a significant burden on the free exercise of religion. That finding of fact was effectively placed beyond the power of any reviewing court when the UEP opted not to order a transcript of the trial. Without a transcript, a reviewing court cannot assess the sufficiency of the evidence supporting any finding, and thus, this Court is bound to accept the trial court's findings as true.

III. THE UTAH SUPREME COURT PROPERLY RECOGNIZED THAT STATES HAVE A COMPELLING INTEREST IN ALLOWING PARTIES ACCESS TO THE JUDICIAL SYSTEM.

The Petition does not directly address the Utah Supreme Court's conclusion that even if the Judgment were a substantial burden on the UEP's religious beliefs, it nevertheless serves the compelling interest of allowing all parties – religious or non-religious – access to the judicial system. In that regard, the Utah Supreme Court wrote as follows:

> If we were to accept the UEP's claim that we should refuse to resolve the claimants' case solely because of the assertion that Utah's courts cannot resolve disputes between religious entities, that refusal would deny this fundamental right [of access to the courts] to the claimants. In addition, such a refusal of a remedy alone might constitute an action violative of state or federal Establishment and Free Exercise Clauses.

(UEP Pet. at 29C). The trial court thus concluded that even if the compelling interest test were deemed to apply, the UEP's claim would fail because "by resolving the dispute between the UEP and claimants, the trial court furthered the compelling state interest in keeping the courts open." (UEP Pet., at 30C).

While this aspect of the Utah Supreme Court's decision was not directly addressed in the UEP's Petition, it is central to any defense the UEP might advance based on the free exercise clause. States have a compelling interest to provide open courts for judicial resolution of disputes

between all parties. The primacy of that interest is particularly manifest in this case, where the UEP claims a religious right to call the Plaintiffs apostates and drive them from their homes.

IV. JUDICIAL RESOLUTION OF PROPERTY DISPUTES BETWEEN RELIGIOUS PARTIES DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE.

Part III of the UEP's Petition argues that the trial court cannot possibly resolve the remaining three claims for breach of duty, accounting, and distribution of the trust without entangling itself in religion in a way that would violate the establishment clause. Review is not warranted under the establishment clause for two reasons. First, the inquiry is premature, since these claims have not yet been addressed in the trial court. Plaintiffs' claims for breach of duty, accounting, and distribution were dismissed by the trial court on the basis that the UEP was a charitable trust, and Plaintiffs therefore did not have standing as beneficiaries to challenge trust administration. The Utah Supreme Court reversed that holding, ruling as a matter of law that the UEP was a private trust and returning the matter to the trial court. Since these claims have not yet been presented to the trial court or ruled upon in any way, review on Certiorari is premature, as this Court could offer nothing more than an advisory opinion.

Second, the establishment clause does not preclude adjudication of Plaintiffs' claims under neutral principles of law. Plaintiffs submit that if the remaining claims are presented to the trial court, they may be adjudicated

based on neutral principles of law without adjudicating religious doctrine or polity. The UEP Declaration of Trust is a written document outlining the duties of the trustees in familiar legal terms. Applying neutral principles of law to ascertain the rights of the parties will neither endorse a religion nor entangle the court with religious issues it cannot decide. Where the UEP took full advantage of the civil law when it formed the UEP as a common-law trust, it cannot now be heard to claim that the UEP should not be subject to the civil law in its administration.

CONCLUSION

The trial court rejected the UEP's claim for religious immunity under the First Amendment on the grounds that the UEP failed to produce evidence sufficient to demonstrate any burden on its exercise of religion and that even if there were a burden, the Plaintiffs fundamental right and the states compelling interest in opening the courts to all parties for redress of grievances. The Utah Supreme Court carefully reviewed the findings and rulings of the trial court and concluded that the Judgment did not infringe the UEP's free exercise rights. Plaintiffs submit that nothing in the Petition challenges the fundamental bases for the Utah Supreme Court's opinion,

and review on a Writ of Certiorari is therefore unwarranted.

DATED this 21st day of April, 1999.

Respectfully submitted,

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